

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DISTRICT

HOTHMAN MISANE, TYLER
SLEEP and JEROL WILLIAMS,

Plaintiffs,
v.

Case No 21-487
Judge Hala Y. Jarbou
Magistrate Judge Ray Kent

CITY OF BANGOR, TOMMY SIMPSON,
MAYOR DARREN WILLIAMS and SCOTT GRAHAM,

Defendants.

Jonathan R. Marko (P72450)
Caitlin E. Malhiot (P76606)
Kirstina R. Magyari (P82775)
MARKO LAW, PLLC
Attorneys for Plaintiffs
1300 Broadway Street, Fifth Floor
Detroit, MI 48226
313.777.7529 / 313.771.5785 (fax)
jon@markolaw.com
kirstie@markolaw.com
cmalhiot@goldstarlaw.com

~~Michael S. Bogren (P34835)~~
~~Charles L. Bogren (P82824)~~
~~PLUNKETT COONEY~~
~~Attorney for Tommy Simpson~~
~~333 Bridge Street, NW, Suite 530~~
~~Grand Rapids, MI 49504~~
~~269.226.8820 / 269.382.2506 (fax)~~
~~mbogren@plunkettcooney.com~~

John J. Gillooly (P41948)
Kathleen M. Jozwiak (P79921)
GARAN LUCOW MILLER, P.C.
Attorneys for City of Bangor, Mayor
Williams and Scott Graham
1155 Brewery Park Blvd., Suite 200
Detroit, MI 48207
313.446.5501 / 313.259.0450 (fax)
jgillooly@garanlucow.com
kjozwiak@garanlucow.com

DEFENDANTS CITY OF BANGOR AND MAYOR DARREN WILLIAMS'
MOTION IN LIMINE TO EXCLUDE EVIDENCE OF SPECIFIC
ALLEGATIONS OF SEXUAL MISCONDUCT OR HARASSMENT

NOW COME Defendants, CITY OF BANGOR and MAYOR DARREN WILLIAMS,
by and through their attorneys, GARAN LUCOW MILLER, P.C., and respectfully request
the entry of an Order excluding references to specific allegations of sexual misconduct or

sexual harassment by any witness called to testify at trial in this matter. In support of its motion, Defendants state as follows:

1. Plaintiff Hothman Misane brings this civil rights action against Defendants City of Bangor and Mayor Darren Williams alleging that these Defendants violated the Elliott-Larsen Civil Rights Act (“ELCRA”), the Michigan Whistleblower’s Protection Act (“WPA”) and Title VII of the Civil Rights Act of 1964.

2. The only remaining causes of action in this claim relate to whether the City of Bangor and/or Mayor Darren Williams retaliated against Plaintiff Hothman Misane for Misane’s filing of a complaint of sexual harassment as to former City Manager Tommy Simpson.

3. In a Joint Final Pretrial Order to be filed with this Honorable Court, Plaintiff indicates that, amongst others, he would call the following witnesses at the time of trial: Tyler Sleep, Jerol Williams, Amanda Karr, Saadia Siddique and David Tendziegloski.

4. As this Court is well aware, Amanda Karr, former Plaintiff Jerol Williams and former Plaintiff Tyler Sleep each filed complaints of sexual harassment.

5. The claims of sexual harassment by Plaintiffs Jerol Williams and Tyler Sleep have been dismissed by this Honorable Court.

6. It is anticipated that Plaintiff will attempt, through his testimony and/or the calling of the above-referenced witnesses, to attempt to elicit testimony regarding specific instances of alleged comments by former Defendant Tommy Simpson

7. That specific instances of comments by former City Manager Tommy Simpson are completely irrelevant to the remaining claim in this case, i.e. whether Plaintiff

was retaliated against for reporting Simpson's alleged sexual harassment and whether Defendants had a legitimate, non-retaliatory reason for Misane's termination.

8. That the alleged sexually inappropriate comments made to Plaintiff by Defendant Tommy Simpson are irrelevant pursuant to Federal Rules of Evidence 401 and 402 and substantially more prejudicial than probative pursuant to Federal Rule of Evidence 403.

9. Moreover, the underlying details of the sexual harassment complaint filed by Amanda Karr are also irrelevant pursuant to Federal Rules of Evidence 401 and 402 and substantially more prejudicial than probative pursuant to Federal Rule of Evidence 403.

10. As this Court noted in its April 10, 2023, Opinion, Plaintiff has alleged that Simpson made sexually-explicit comments to him over a period of approximately three years. This Court also noted that the "aforementioned precedent suggests that these comments were offhand or isolated rather than severe or pervasive." Opinion at, p. 13.

11. This Court also went on to note that "Simpson's comments were not threatening in nature." Id.

12. This Honorable Court went on to note that even considering the complained of comments in their totality, one could "hardly say the environment was permeated with discriminatory intimidation, ridicule, and insult by Simpson because [Plaintiff] admit[s] to engaging in similar conduct." Id.

13. That it is further undisputed that none of the above-referenced witnesses had any involvement in the decision to terminate Plaintiff.

14. Federal Rule of Evidence 402 allows this Honorable Court to exclude evidence as irrelevant especially where, as here, it has no logical basis to the remaining claims advanced in the instant litigation.

15. Federal Rule of Evidence 403 authorizes this Honorable Court to exclude relevant evidence if the probative value of such evidence is substantially outweighed by unfair prejudice, confusion of the issues and a waste of time.

WHEREFORE, Defendants CITY OF BANGOR and MAYOR DARREN WILLIAMS respectfully request the entry of an Order excluding testimony from any witness as to specific details of alleged instances of intimidation, sexual harassment or sexual misconduct.

Respectfully submitted:

GARAN LUCOW MILLER, P.C.

/s/John J. Gillooly
JOHN J. GILLOOLY (P41948)
Attorney for Defendants City of Bangor
and Mayor Darren Williams
1155 Brewery Park Blvd., Suite 200
Detroit, MI 48207
313.446.5501
jjgillooly@garanlucow.com

Dated: April 21, 2023
5823994

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DISTRICT

HOTHMAN MISANE, TYLER
SLEEP and JEROL WILLIAMS,

Plaintiffs,
v.

Case No 21-487
Judge Hala Y. Jarbou
Magistrate Judge Ray Kent

CITY OF BANGOR, TOMMY SIMPSON,
MAYOR DARREN WILLIAMS and SCOTT GRAHAM,

Defendants.

Jonathan R. Marko (P72450)
Caitlin E. Malhiot (P76606)
Kirstina R. Magyari (P82775)
MARKO LAW, PLLC
Attorneys for Plaintiffs
1300 Broadway Street, Fifth Floor
Detroit, MI 48226
313.777.7529 / 313.771.5785 (fax)
jon@markolaw.com
kirstie@markolaw.com
cmalhiot@goldstarlaw.com

~~Michael S. Bogren (P34835)~~
~~Charles L. Bogren (P82824)~~
~~PLUNKETT COONEY~~
~~Attorney for Tommy Simpson~~
~~333 Bridge Street, NW, Suite 530~~
~~Grand Rapids, MI 49504~~
~~269.226.8820 / 269.382.2506 (fax)~~
~~mbogren@plunkettcooney.com~~

John J. Gillooly (P41948)
Kathleen M. Jozwiak (P79921)
GARAN LUCOW MILLER, P.C.
Attorneys for City of Bangor, Mayor
Williams and Scott Graham
1155 Brewery Park Blvd., Suite 200
Detroit, MI 48207
313.446.5501 / 313.259.0450 (fax)
jjgillooly@garanlucow.com
kjozwiak@garanlucow.com

BRIEF IN SUPPORT OF
DEFENDANTS CITY OF BANGOR AND MAYOR DARREN WILLIAMS'
MOTION IN LIMINE TO EXCLUDE EVIDENCE OF SPECIFIC
ALLEGATIONS OF SEXUAL MISCONDUCT OR HARASSMENT

In support of their Motion in Limine, Defendants CITY OF BANGOR and MAYOR DARREN WILLIAMS rely upon the April 10, 2023, Opinion of this Honorable Court together with Rules 401, 402 and 403 of the Federal Rules of Evidence.

Respectfully submitted:

GARAN LUCOW MILLER, P.C.

/s/John J. Gillooly
JOHN J. GILLOOLY (P41948)
Attorney for Defendants City of Bangor
and Mayor Darren Williams
1155 Brewery Park Blvd., Suite 200
Detroit, MI 48207
313.446.5501
jjgillooly@garanlucow.com

Dated: April 21, 2023
5823994

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CERTIFICATE OF SERVICE

I hereby certify that on April 21, 2023, my assistant, Dena Marie Shealy, electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

Michael S. Bogren

mbogren@plunkettcooney.com, daustin@plunkettcooney.com

Charles L. Bogren

cbogren@plunkettcooney.com

Caitlin E. Malhiot

cait@markolaw.com

Jonathan Robert Marko

jon@markolaw.com, melinda@markolaw.com

and I hereby certify that on April 21, 2023, my assistant, Dena Marie Shealy, mailed by United States Postal Service the foregoing document to the following non-ECF participants, with full legal postage prepaid thereon and deposited in the United States mail: **NA**

GARAN LUCOW MILLER, P.C.

/s/John J. Gillooly

JOHN J. GILLOOLY (P41948)

Attorney for Defendants City of Bangor
and Mayor Darren Williams

1155 Brewery Park Blvd., Suite 200

Detroit, MI 48207

313.446.5501

jjgillooly@garanlucow.com